Maris Housing Sdn Bhd & Anor v Lee Seng Wai

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S22–640 OF 2003
MOHD HISHAMUDIN J
4 NOVEMBER 2003

Civil Procedure — Declaration — Application for — Applicants having recourse to alternative and equally efficacious legal remedy — Applicant's legal right or legal character not in issue — Whether proper for applicant to seek declaration as remedy — Specific Relief Act 1950 s 41

Civil Procedure — Injunction — Application for — Applicants having recourse to alternative and equally efficacious legal remedy — Whether injunction to be granted

Legal Profession — Practice of law — Practice and etiquette — Advocate and solicitor not to appear where pecuniarily interested – Whether pecuniarily interested means 'directly' pecuniarily interested — Whether advocate and solicitor may appear where 'indirectly' pecuniarily interested — Legal Profession (Practice and Etiquette) Rules 1978 r 27

Words and phrases — 'Directly pecuniarily interested' — Legal Profession (Practice and Etiquette) Rules 1978 r 27

The plaintiffs were respectively the developer and management corporation of a shopping complex. They were involved with disputes with some of the owners of shop lots in the shopping complex over, inter alia, the right to increase maintenance fees. The plaintiffs instituted civil suits in the subordinate courts against these owners to recover the increased maintenance fees allegedly due and owing to them. The defendant, an advocate and solicitor owned one such shop lot, and was one of those sued by the plaintiffs. He was also appointed by the shop lot owners to defend them in the subordinate court suits. On 22 May 2003, the plaintiffs filed a writ and statement of claim against the defendant seeking, inter alia: (i) a declaration that the defendant by representing the shop lots owners in the various suits specified in an annexure to the statement of claim placed himself in a conflict of interest situation and was therefore in breach of rr 3, 4, 5, 9 and, particularly, 27 of the Legal Profession (Practice and Etiquette) Rules 1978; and (ii) an injunction to restrain the defendant in the present case from representing the shop lot owners in the suits listed in the annexure. The suit against the defendant as a shop lot owner was not however one of the suits specified in the annexure. At the same time, the plaintiffs also filed an interlocutory application pursuant to O 29 r 1 of the Rules of the High Court 1980 for an interlocutory injunction to restrain the defendant from representing the shop lot owners sued in the subordinate courts. The plaintiffs objected to the defendant acting as counsel for the shop lot owners in the subordinate courts on the ground that such an appointment would result in a conflict of interest. The plaintiffs argued that the defendant as one of the owners of the shop lots had a pecuniary interest in the outcome of the cases, and would stand to benefit financially should the outcome of the subordinate courts suits be in favour of the shop lot owners. The plaintiffs also cited rr 3, 4, 5, 9 and

27 of the Legal Profession (Practice and Etiquette) Rules 1978, and the case of *Sinwara Sdn Bhd v Maris Housing Sdn Bhd & Ors* [2003] 6 MLJ 771.

Held, dismissing the application with costs:

(1) The plaintiffs in the main action (the present High Court civil suit) had no cause of action a gainst the defendant. Since they had no cause of action in the main suit, they had no right to apply for an interlocutory injunction (see para 13).

(2) The phrase 'directly pecuniarily interested' in r 27 of the Legal Profession (Practice and Etiquette) Rules 1978 means that the plaintiffs must show that the defendant is *directly* pecuniarily interested in the subordinate courts cases. Merely because the defendant in the present case is one of the owners of the shop lots involved in the dispute with the plaintiffs and is one of those sued by the plaintiffs in the subordinate courts, it does not mean that he is '*directly* pecuniarily interested' in those cases. The defendant is not a party to any of the civil suits mentioned in the annexure and, thus, any order that the subordinate courts might make in any of those cases would not *directly* affect him. At best, he can only be said to be *indirectly* pecuniarily interested in those cases (see paras 15–17); *Sinwara Sdn Bhd v Maris Housing Sdn Bhd & Ors* [2003] 6MLJ 771 distinguished.

(3) Seeking a declaration or an injunction in the High Court was not the appropriate course of action for the plaintiffs to take in the instant case. As a rule, the High Court should not grant a declaration or an injunction if the aggrieved party concerned has recourse to an alternative and equally efficacious legal remedy (see para 23) *Eshah binti Sa'at v Meriam binti Sa'at* [1975] 2 MLJ 97 referred.

(4) Another reason why a declaration was not the appropriate remedy is due to s 41 of the Specific Relief Act 1950. Section 41 of the Specific Relief Act 1950 provides that any person entitled to any 'legal character', or to any 'right as to any property', may institute a suit against any person denying, or interested to deny, his entitlement to the 'legal character' or to the 'right as to any property'. However, from the facts, it was obvious that the action by the plaintiffs against the defendant had nothing to do with either the plaintiffs' entitlement to any 'legal character' or the plaintiffs' right as to any property. The present action was concerned with the legal right of the *defendant*, rather than with the legal right or legal character of the plaintiffs, ie the right of the defendant, an advocate and solicitor, to represent his clients in the subordinate courts (see paras 24–25).

(5) The proper course of action for the plaintiffs to pursue in the instant case is to make an application in the subordinate courts, in each of the relevant civil suits, for the defendant in the present case to be disqualified from representing the shop lot owners in the particular subordinate court action. The application may either be by way of a preliminary objection

at the appropriate time or by way of a formal application pursuant to O 53 r 11 of the Subordinate Courts Rules 1980 (see para 26).

[**Bahasa Malaysia summary**

Plaintif-plaintif masing-masing adalah pemaju dan perbadanan pengurusan sebuah kompleks membeli-belah. Mereka terlibat dalam pertikaian-pertikaian dengan beberapa pemilik kedai lot dalam kompleks membeli-belah tersebut mengenai, antara lain, hak untuk menambahkan yuran penyenggaraan. Plaintif-plaintif telah memulakan guaman-guaman sivil di mahkamah bawahan terhadap pemilik-pemilik tersebut untuk mendapat balik tambahan yuran penyenggaraan yang dikatakan perlu dibayar dan tertunggak kepada beliau. Defendan, seorang peguambela dan peguamcara memiliki sebuah kedai lot sedemikian, dan merupakan salah seorang yang disaman oleh plaintif-plaintif. Beliau juga dilantik oleh pemilik-pemilik kedai lot tersebut untuk membela mereka dalam guaman-guaman mahkamah bawahan tersebut. Pada 22 Mei 2003, plaintif-plaintif telah memfailkan writ dan pernyataan tuntutan terhadap defendan memohon, antara lain,: (i) satu deklarasi bahawa defendan dengan mewakili pemilik-pemilik kedai lot dalam pelbagai guaman yang dispesifikasikan dalam lampiran kepada pernyatan tuntutan telah meletakkan dirinya dalam keadaan konflik kepentingan dan oleh itu melanggar kk 3, 4, 5, 9 dan, terutamanya, 27 Kaedah–Kaedah Profesyen Undang–Undang (Amalan dan Etika) 1978; dan (ii) satu injunksi untuk menghalang defendan dalam kes semasa daripada mewakili pemilik–pemilik kedai lot dalam guaman–guaman yang disenaraikan dalam lampiran tersebut. Guaman terhadap defendan sebagai pemilik kedai lot bagaimanapun bukan salah satu daripada yang dispesifikasikan dalam lampiran tersebut. Pada masa yang sama, plaintif–plaintif juga telah memfailkan satu permohonan interlokutori menurut A 29 k 1 Kaedah–Kaedah Mahkamah Tinggi 1980 untuk satu injunksi interlokutori untuk menghalang defendan daripada mewakili pemilik–pemilik kedai lot daripada menyaman dalam mahakmah bawahan. Plaintif–plaintif telah membantah terhadap defendan yang bertindak sebagai peguam bagi pihak pemilik–pemilik kedai lot di mahkamah bawahan atas alas an bahawa pelantikan tersebut akan menyebabkan konflik kepentingan. Plaintif–plaintif berhujah bahawa defendan sebagai salah seorang daripada pemilik kedai lot mempunyai kepentingan wang daripada keputusan kes tersebut, dan akan mendapat faedah dari segi kewangan jika keputusan guaman–guaman mahkamah bawahan menyebelahi peihak pemilik–pemilik kedai lot tersebut. Plaintif–plaintifjuga memetik kk 3, 4, 5, 9 dan 27 Kaedah–Kaedah Profesyen Undang–Undang (Amalan dan Etika) 1978, dan kes *Sinwara Sdn Bhd v Maris Housing Sdn Bhd & Ors* [2003] 6 MLJ 771.

Diputuskan, menolak permohonan tersebut dengan kos:

(1) Plaintif–plaintif dalam tindakan utama (guaman sivil Mahkamah Tinggi sekarang) tiada kuasa tindakan terhadap defendan. Memandangkan mereka tiada kausa tindakan dalam guaman utama, mereka tiada hak untuk memohon untuk satu injunksi interlokutori (lihat perenggan 13).

(2) Ungkapan 'directly pecuniarily interested' dalam k 27 Kaedah–Kaedah Profesyen Undang–Undang (Amalan dan Etika) 1978 bermaksud bahawa plaintif–plaintif harus menunjukkan bahawa defendan secara langsung berkepentingan wang dalam kes–kes mahkamah bawahan. Hanya kerana defendan dalam kes semasa adalah salah seorang daripada pemilik kedai lot yang terlibat dalam pertikaian dengan plaintif–plaintif dan adalah salah seorang yang disaman oleh plaintif–plaintif dalam mahkamah bawahan, iatidak bermaksud bahawa beliau adalah '*directly* pecuniarily interested' dalam kes–kes tersebut. Defendan buka satu pihak kepada mana–mana guaman sivil yang dinyatakan dalam lampiran tersebut dan, oleh itu, apa–apa perintah yang mahkamah bawahan mungkin putuskan tidak akan secara langsung menggugat beliau. Lebih–lebihpun, beliau hanya boleh dikatakan berkepentingan secara tidak langsung dalam kes–kes tersebut (lihat perenggan-perenggan-perenggan 15–17); *Sinwara Sdn Bhd v Maris Housing Sdn Bhd & Ors* [2003] 6 MLJ 771 dibeza.

(3) Permohonan satu deklarasi atau satu injunksi dalam Mahkamah Tinggi bukan satu pelaksanaan tindakan yang sesuai untuk diambil oleh plaintif–plaintif dalam kes semasa. Sebagai satu rukun, Mahkamah Tinggi tidak sepatutnya memberikan satu deklarasi atau satu injunksi jika pihak terkilan yang berkaitan mempunyai satu jalan alternatif dan remedi sah yang sama keberkesanannya (lihat perenggan 23); *Eshah binti Sa'at v Meriam binti Sa'at* [1975] 2 MLJ 97 dirujuk.

(4) Satu alas an lagi kenapa satu deklaraso bukannya satu remedi yang sesuai adalah bekaitan s 41 Akta Relif Spesifik 1950. Seksyen 41 Akta Relif Spesifik 1950 memperuntukkan bahawa sesiapa yang berhak kepada mana–mana 'legal character', atau kepada mana–aman 'right as to any property', boleh memulakan satu guaman terhadap sesiapa yang menafikan, atau berminat untuk menafikan, kelayakan beliau kepada 'legal character' atau kepada 'right as to any property'. Namun begitu, berdasarkan fakta–fakta, ia adalah jelas bahawa tindakan oleh plaintif–plaintif terhadap defendan tiada kaitan dengan hak plaintif–plaintif kepada mana–mana 'legal character' atau hak plaintif–plaintif ke atas mana–aman hartanah. Kes semasa adalah berkaitan hak dari sisi undang–undang *defendan*, dan bukan hak dari segi undang–undang atau sifat dari segi undang–undang plaintif–plaintif, iaitu hak defendan, sebagai seorang peguambela dan peguamcara, untuk mewakili anakguam beliau di mahkamah bawahan (lihat perenggan-perenggan 24–25).

(5) Pelaksanaan tindakan yang betul untuk plaitif–plaintif mulakan dalam kes semasa adalah untuk membuat satu permohonan di mahkamah bawahan, dalam setiap guaman sivil berkaitan, agar defendan digugurkan daripada mewakili pemilik–pemilik kedai lot dalam tindakan mahkamah bawahan yang tertentu. Permohonan tersebut boleh sama ada melalui satu bantahan awal pada masa yang sesuai atau melalui satu permohonan rasmi menurut A 53 k 11 Kaedah–Kaedah Mahkamah Bawahan 1980 (lihat perenggan 26.]

Notes

For cases on practice and etiquette, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 1744–1760.

For cases on applications for declaration, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1947–1963.

For cases on applications for injunction, see 2(2) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2464–2471.

Cases referred to

Eshah binti Sa'at v Meriam binti Sa'at & Ors [1975] 2 MLJ 97 (refd)
Sinwara Sdn Bhd v Maris Housing Sdn Bhd & Ors [2003] 4 MLJ 771 (refd)

Legislation referred to

Legal Profession (Practice and Etiquette) Rules 1978 rr 3, 4, 5, 9, 27
Rules of the High Court 1980 O 29 r 1
Specific Relief Act 1950 ss 41, 54(i)
Subordinate Courts Rules 1980 O 53 r 11

Christine Lim (Shariff & Som) for the plaintiffs.
Edwin Lim (Edwin Lim & Suren) for the defendant.

Mohd Hishamudin J:

[1] This is an interlocutory application by the plaintiffs pursuant to O 29 r 1 of the Rules of the High Court 1980 for an interlocutory injunction to restrain the defendant, an advocate and solicitor, from representing owners of shop lots in a shopping complex sued by the plaintiffs in the subordinate courts. In the civil suits in the subordinate courts, the plaintiffs are claiming against the shop lots owners for the payment of maintenance fee in respect of the shopping complex. The case numbers of the civil suits, all instituted in the subordinates courts of Kuala Lumpur, are specified in a list annexed to the statement of claim and the summons in chambers.

[2] The first plaintiff company is the developer of a shopping complex in Kuala Lumpur, known as 'Kompleks Desa'.

[3] The second plaintiff company was appointed by the first plaintiff to be in charge of the management of the shopping complex. One of the duties of the second plaintiff is to collect the maintenance fee, on behalf of the first plaintiff, from the owners of the shop lots in the shopping complex.

[4] In the sale and purchase agreements between the first plaintiff and the shop lots owners, the former is given the right to collect maintenance fee from the latter. Such fee is to be utilized for the maintenance of the shopping complex.

[5] The defendant is one of the owners of the shop lots in the shopping complex.

[6] There is a dispute between the plaintiffs and some of the owners of the shop lots, including the defendant, regarding the right of the plaintiff to unilaterally increase the maintenance fee under the sale and purchase agreements. The plaintiffs contend that they have the right under the sale and purchase agreements to unilaterally increase the maintenance fee, and allege that some of the owners of the shop lots are in breach of the sale and purchase agreements by refusing to pay the increased maintenance fee. The owners of the shop lots concerned, on the other hand, maintain that it is the plaintiffs themselves who are in breach of the sale and purchase agreements by imposing a maintenance fee which is excessive and not permissible under the agreements.

[7] The plaintiffs have filed civil actions against the said owners of the shop lots (including the defendant) in the subordinate courts in Kuala Lumpur to recover the maintenance fee allegedly due to the plaintiffs. The names and numbers of the relevant civil suits are specified in a list (the suit against the defendant, however, is not included in the list) annexed to the statement of claim and also to present summons in chambers. The defendants in the subordinate courts cases have appointed the defendant to represent them as counsel.

[8] The plaintiffs object to the defendant acting as counsel for the defendants in the subordinate courts on the ground that such an appointment results in a conflict of interest. The plaintiffs argue that since the defendant is one of the owners of the shop lots who dispute the plaintiffs' right to increase the maintenance fee, and is also one of those sued by the plaintiffs' in the subordinate courts for refusing to pay the maintenance fee, therefore, he has a pecuniary interest in the outcome of the cases. It is argued by the plaintiffs that should the outcome of the suits in the subordinate courts be in favour of the defendants, then, the defendant will also benefit financially from the decision of the courts. The plaintiffs cite the provisions rr 3, 4, 5, 9 and 27 of the Legal Profession (Practice and Etiquette) Rules 1978, and the case of *Sinwara Sdn Bhd v Maris Housing Sdn Bhd & Ors* [2003] 4 MLJ 771.

[9] The plaintiffs, however, place emphasis more on r 27. This rule provides as follows:

> Advocate and solicitor not to appear where pecuniarily interested.
>
> (a) An advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested.
>
> (b) This rule does not apply to the case of an advocate and solicitor appearing himself to tax his own costs.

[10] On 22 May 2003, the plaintiffs filed a writ action against the defendant seeking, inter alia:

(a) a declaration that the defendant by representing the shop lots owners in the various suits specified in the annexure to the statement of claim

places himself in a conflict of interest situation and is in breach of rr 3, 4, 5, 9 and, particularly 27 of the Legal Profession (Practice and Etiquette) Rules 1978; and

(b) an injunction to restrain the defendant in the present case from representing the defendants in suits listed in the annexure.

[11] On the same day itself, the plaintiffs filed the present interlocutory application (encl 4).

[12] I have dismissed the present interlocutory application with costs.

[13] In my judgment, the plaintiffs in the main action (ie the present High Court civil suit) have no cause of action against the defendant. And since the plaintiffs have no cause of action in the main suit, therefore, they have no right to apply for an interlocutory injunction.

[14] Rules 3, 4, 5, and 9 of the Legal Profession (Practice and Etiquette) Rules are, to my mind, clearly irrelevant, and although they are cited in the pleadings and the affidavits, the learned counsel for the plaintiffs in her written submission – and, rightly, I should say – does not seem to place much reliance on them. As said above, the plaintiffs stress more on r 27.

[15] Thus, in this judgment, I shall confine myself only to r 27. It is pertinent to observe that para (a) of r 27 uses the phrase:

… *directly* pecuniarily interested … (Emphasis added.)

[16] In my view, what this means is that it is not sufficient for the plaintiffs invoking the rule merely to show that the defendant is pecuniarily interested in the subordinate courts cases. The plaintiffs must show that the defendant is *directly* pecuniarily interested in those cases.

[17] Now, it cannot be denied that in the subordinate courts cases, if the courts were to hold that the plaintiffs have no right under the sale and purchase agreements to unilaterally increase the maintenance fee, such a decision will also benefit the defendant in the present action. For, such a decision will mean that the defendant, like the other shop lots owners, will not be liable to pay the maintenance fee at the new increased rate, unilaterally imposed by the plaintiffs: he is only liable to pay the maintenance fee at the rate prior to the unilateral increment. However, be that as it may, I am not prepared to go as far as holding that, just because the defendant in the present case is one of the owners of the shop lots who dispute the plaintiffs' right to unilaterally increase the maintenance fee, and is one of those owners of shop lots sued by the plaintiffs in the subordinate courts, therefore, he must be taken to be '*directly* pecuniarily interested' in those cases. My reason for so saying is that he is not a party to any of the civil suits mentioned in the annexure and, thus, any order that the subordinate court might make in any of those cases will not *directly* affect him. In my view, at best, by reason of the facts mentioned on the position of the defendant (that the defendant is one of the owners of the shop lots and that there is also a similar pending

suit against him in the subordinate courts) he can only be said to be *indirectly* pecuniarily interested in those cases.

[18] As for *Sinwara*, the case relied upon by the plaintiffs, there the plaintiff (Sinwara Sdn Bhd) is also one of the shop lots owners in the same shopping complex (Kompleks Desa) as in the present case; and the defendants in that case are the plaintiffs in the present case. The issue in *Sinwara* is similar as the issue in the present case: whether the defendants there (the plaintiffs in the case before me) can unilaterally increase the maintenance fee in respect of the shopping complex. In *Sinwara*, the present defendant, Mr Lee Seng Wai, acted as counsel for the plaintiff. At the commencement of the hearing of that action, the defendants in that case raised a preliminary objection, objecting to Mr Lee Seng Wai appearing as counsel for the plaintiff on the ground that Mr Lee (to quote the facts of the case as narrated in the reported judgment) 'is an owner of one of the lots and is therefore an interested party and has a pecuniary interest'. The defendants in that case relied on rr 3, 4, 5 and 27 of the Legal Profession (Practice and Etiquette) Rules 1978.

[19] The preliminary objection was upheld by the learned judge. With respect, my difficulty in appreciating the judgment is that the learned judge did not explain whether his decision was based on all the four specified rules (namely, rr 3, 4, 5 and 27) read together or whether his decision was based only on a particular rule or only on some of the four rules mentioned. In his judgment, the learned judge began with explaining the purpose of the rules as follows at p 774:

> The objection was raised under rr 3, 4, 5 and 27 of the Legal Profession (Practice and Etiquette) Rules 1978. The purpose of the rule is to ensure that counsel appearing before the courts can argue objectively; thereby being able to assist the courts to arrive at a fair and just decision. If counsel were in an objective position, courts can have a greater confidence in the sincerity and candour of counsel's assessment of the facts. Such an objective counsel is in fact in a better position to represent his client's interest to obtain a fair and just decision.

[20] Then, at a later part of the judgment, his lordship merely concluded:

> Being in the same position as the plaintiff, counsel has an interest in the result.

[21] Be that as it may, with respect, I am unable to share the views of the learned judge in the case cited, based on the reasons that I have already given above.

[22] In any case, I think that I should also add that *Sinwara*, on the facts, can be distinguished from the present case. There, unlike in the present case, there was no application for an injunction, whether permanent or interlocutory, to prevent Mr Lee from representing his client. In that case, in objecting to Mr Lee representing his client, the defendants had adopted the correct procedure: they had put forward their objection by way of a preliminary objection.

[23] Now, even assuming that the defendant in the present case, by representing the shop lots owners in the civil suits in the subordinate courts,

is in breach of r 27 (or any of the rules) of the Legal Profession (Practice and Etiquette) Rules, still, in my judgment, seeking a declaration or an injunction in the High Court is not the appropriate course of action to be taken by the plaintiffs. As a rule, a High Court should not grant a declaration or an injunction if the aggrieved party concerned could have recourse to an alternative and equally efficacious legal remedy. Section 54(i) of the Specific Relief Act 1950 provides that an injunction cannot be granted when equally efficacious relief can certainly be obtained by other usual modes of proceeding. And it has been decided in *Eshah binti Sa'at v Meriam binti Sa'at & Ors* [1975] 2 MLJ 97 that the court will not grant a declaration to a litigant if an alternative remedy is available to the litigant.

[24] As for declaration, there is another reason as to why on the facts of the present case seeking a declaration is not an appropriate course of action. Section 41 of the Specific Relief Act provides that any person entitled to any 'legal character', or to any 'right as to any property', may institute a suit against any person denying, or interested to deny, his entitlement to the 'legal character' or to the 'right as to any property'. However, from the facts of the present case and prayer (a) above, it is to be observed that the action by the plaintiffs against the defendant in the case that is now before me has nothing to do with either the plaintiffs' entitlement to any 'legal character' or the plaintiffs' right as to any property. That the present proceeding has nothing to do with the plaintiffs' right to property is obvious. But the same cannot be said in relation to the term 'legal character'. What is meant by 'legal character', the term used by s 41? In *Indian Contract & Specific Relief Acts* by Pollock & Mulla, (12th Ed) Vol II, p 2702, the learned authors explain the term as follows:

> A man's 'legal character' is the same thing as his status which is constituted by the attributes the law ascribes to him in his individual and personal capacity. … Questions relating to minority, rank, caste, official position, civil death, illegitimacy or legitimacy, nationality are about legal character of a person. It refers to a position recognized by law.

[25] As I see it, on the facts, the present action is concerned with the legal right of the *defendant*, rather than with the legal right or legal character of the plaintiffs: the right of the defendant, an advocate and solicitor, to represent his clients in the subordinate courts. Thus, on the basis of the issue raised by the plaintiffs themselves, and considering the ambit of s 41, declaration is not a remedy available to the plaintiffs.

[26] To my mind, in the present case, the plaintiffs have an appropriate course of action which they should have pursued. In the first place, they need not have to come to the High Court. Instead, they could have easily sought the appropriate remedy at the very forum where they have actually instituted their actions against the shop lots owners — the subordinate courts of Kuala Lumpur. In the present case, all the plaintiffs have to do, if they believe that the defendant in the present case is in breach of the Legal Profession (Practice and Etiquette) Rules, is to make an application in the lower courts, in each of the relevant civil suits, for the defendant in the present

case to be disqualified from representing the defendant in the particular lower court action. The application can either be by way of a preliminary objection (at the appropriate time — just like what the defendants in *Sinwara* have done), or better still, by way of a formal application. The application should be pursuant to O 53 r 11 of the Subordinate Courts Rules 1980.

Application dismissed with costs.

Reported by Andrew Christopher Simon